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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,636	02/25/2004	Martin Sugar	104035.274053	3096

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/786,636	Applicant(s) SUGAR ET AL.	
	Examiner Lakshmi S Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-25-04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-23 are pending in the instant application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Chemical Abstracts XP 002233115 (XP 1999) or XP 002233116 (XP 1998, both submitted on IDS) or XP 002233114 (XP) (submitted on IDS).

Each of the above references discloses the claimed compound as a surfactant and a foaming agent in cleansing or toiletry compositions. XP discloses Olivem 400, which is derived from olive oil by a carboxylate reaction and is the same as the claimed compound. XP 1998 discloses the olivem 400 as toiletry composition. XP and XP 1999 also disclose the compound as skin tolerant and XP 1998 teach the compound as mild and natural. Thus, instant claim 1 is anticipated by the above references.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 2, 8, 9, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Chemical Abstracts XP 002233115 (XP 1999), XP 002233116 (XP 1998) or XP 002233114 (XP) over a combination of the references (submitted on PTO-1449).

XP 1999 teaches a skin tolerant foam surfactant, sodium PEG-7 olive oil carboxylate, as having a good surface activity, foam characteristics, viscosity and biodegradation. XP 1999 suggests that the foam surfactant is skin tolerant and is hence advantageous in the formulations.

XP 1998, described above, teaches Olivem 400 as a cleansing agent and useful in toiletry compositions as a foaming and mild and natural cleansing agents.

XP teaches the claimed compound as a foaming agent having high cleaning and foaming activities, with low toxicity and irritancy.

None of the references teach the claimed concentrations of PEG-7 olive oil carboxylate or the specific foam bath or shampoo preparation. However, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use the PEG-7 olive oil carboxylate of XP or XP 1999 or XP1998, in optimum concentrations, as a surfactant in a

Art Unit: 1615

cleansing composition such as a bath or shampoo preparation because all the references teach the claimed compound as a foaming surfactant and XP 1998 suggests the compound to be a mild and natural, whereas XP 1999 and XP suggest that the compound is tolerable to skin, biodegradable and yet has good foaming as well as surfactant properties. The expected result is good tolerance to skin, biodegradability and yet the desired cleansing action with a composition containing the compound.

3. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,468,514 ('514) in view of any one of Chemical Abstracts XP 002233115 (XP 1999), XP 002233116 (XP 1998) or XP 002233114 (XP).

'514 teaches the use of one or more surfactants in personal hygiene composition such as a shampoo or hand washing soap.'514 teaches that surfactants such as sodium lauryl sulfate (SLS) not only clean the skin by flushing out the dirt but also causes skin irritation and mucous membranes (lines bridging col. 1-2). '514 teaches that totally avoiding SLS is not possible and hence suggests combining different types of surfactants such as so as to replace SLS with milder surfactants and thus increase the skin compatibility of the cleansing composition (col. 2 and col. 4). '514 teach surfactants such as N-acyl amino acids are milder and hence can be combined with SLS (col. 5-6). However, '514 fail to teach the claimed PEG-7 olive carboxylate as a foam booster or a surfactant.

XP references discussed above teach the claimed olive oil carboxylate as a natural and yet mild cleansing surfactant with low irritancy and high foaming action. The references suggest including the surfactant in toiletry compositions for their cleansing and low irritancy effect.

Art Unit: 1615

Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to add an effective amount of PEG-7 olive oil carboxylate as a surfactant in the composition of '514 because '514 desires a mild surfactant alternative to the irritating sodium lauryl sulfate and the XP references teaches the claimed carboxylate as a suitable alternative that is biodegradable, low irritating and yet has a good cleansing and foaming activity. One of an ordinary skill in the art would have expected to reduce the irritating effect of SLS by its adsorption to skin due to the presence of PEG-7 olive oil carboxylate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala

Examiner

Art Unit 1615

February 14, 2005